

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 06-2495-FH

THOMAS DALE SIDENER,

Defendant.  
\_\_\_\_\_ /

OPINION AND ORDER

Defendant submits this Motion to Quash, arguing that there was no evidence introduced at preliminary examination to bind over Defendant. Defendant is charged with: Controlled Substance-Possession (Narcotic/Cocaine) less than 25 grams, contrary to MCL 333.7403(2)(a)(v). On June 8, 2006, a preliminary examination was held in the 37<sup>th</sup> District Court before the Honorable Walter A. Jakubowski. The People called two witnesses, both police officers from the City of Warren.

Officer Steve Campbell testified that on March 4, 2006 at approximately 8:48 p.m. he stopped a green Dodge Pickup for an obscured license plate (Exam Transcript, p. 4, 5). The Officer spoke to the driver of the vehicle, Mr. Sidener ("Defendant"), who provided the officer with a driver's license and proof that he owned the vehicle (ET, p. 6). Officer Campbell also observed a female passenger within the vehicle (ET, p. 5). Officer Campbell asked if he could search the vehicle and Defendant consented (ET, p. 6). The Defendant stepped out of the vehicle and was patted down by Officer Campbell. Officer Campbell observed the passenger making



furtive movement inside the vehicle (ET, p. 6). Officer Johnson arrived as backup and patted down the passenger (ET, p. 6).

The officers then performed a search of the vehicle. Officer Campbell observed pieces of chore boy, drug paraphernalia, in the vehicle (ET p. 7). Officer Johnson found crack cocaine in a wrapper between a bench, in the middle of driver and passenger seat (ET p. 7).

Defendant argues that there was no evidence presented at preliminary examination to show that Defendant had actual physical control over the substance or the right to control the substance. Defendant argues that the passenger's movement inside the vehicle indicates that she was stashing the crack cocaine inside the vehicle without the knowledge of defendant. Defendant argues that he voluntarily submitted to the search of the vehicle. He also asserts that his behavior is inconsistent with a person who has a controlled substance in his vehicle where the police will easily discover it.

People, in response, argue that a person need not have actual physical possession of a controlled substance to be guilty. The people note that cocaine was found in Defendant's vehicle, there was chore boy in the vehicle, the passenger was making movements inside the vehicle, and the vehicle was traveling at ten miles below the speed limit. People assert that the totality of the circumstances indicate probable cause that defendant had constructive possession of cocaine.

The decision to bind a defendant over is reviewed for abuse of discretion. *People v Beasley*, 239 Mich App 548; 609 NW2d 581 (2000). In reviewing a district court's decision to bind a defendant for trial, a circuit court must consider the entire record of the preliminary examination, and it may not substitute its judgment for that of the magistrate. *Id.* Reversal is appropriate only if it appears on the record that the district court abused its discretion. *Id.*

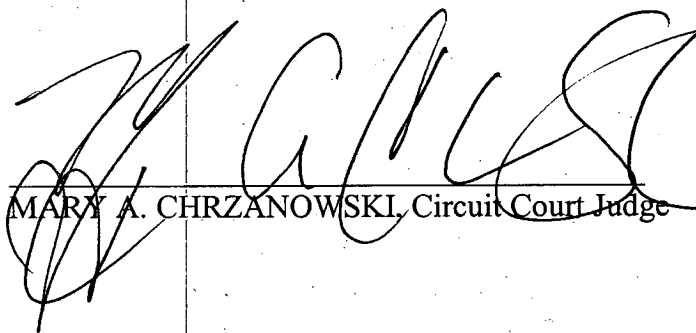
The elements of Unlawful Possession of a Controlled Substance as to the instant case are: (1) the Defendant possessed a controlled substance; (2) that the substance possessed was cocaine; (3) that the Defendant knew that he was possessing cocaine; and (4) that the substance was in a mixture that weighed less than 25 grams. In prosecution of possession of a controlled substance, possession may be either actual or constructive. *People v. Wolfe*, 441 Mich. 1201; 489 N.W.2d 748 (1992); and *People v Harper*, 365 Mich 494, 506-07; 113 NW2d 808 (1962). Possession may be joint, with more than one person actually or constructively possessing a controlled substance. *People v Williams*, 188 Mich App 54, 57 (1991). It is well established that a person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. *People v Harper, supra* at 500. However, constructive possession of cocaine was shown in *United States v Rackley*, 742 F2d 1266, 1272, where traces of cocaine were discovered on shirts stored in Defendant's pickup truck. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id* at 1272; *Wolfe, supra* at 521

The Court is satisfied that the Motion to Quash Information should be denied. If the evidence introduced at the preliminary examination conflicts or raises a reasonable doubt about the defendant's guilt, the magistrate must let the factfinder at trial resolve those questions of fact. *People v Hudson*, 615 NW2d 784 (2000). The Court finds that the prosecution provided sufficient evidence to create probable cause the Defendant had knowledge that cocaine was in his vehicle and that it was not an abuse of discretion to bind over the Defendant. Officer Campbell and Johnson found crack cocaine and chore boy in the vehicle owned by Defendant (ET p. 6, 7). Officer Campbell observed the vehicle moving at approximately ten miles below the speed limit and the passenger making movements while Defendant was being questioned (ET p. 5, 7). The

Court agrees with the prosecution's assertions that the totality of the circumstances indicate probable cause that defendant had constructive possession of cocaine. As such, the Court finds that the evidence presented leaves questions of fact for a jury and that it was not an abuse of discretion to bind over Defendant.

For the reasons set forth above Defendant's Motion to Quash Information and Dismissal of the case is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last pending claim and does not close the case.

IT IS SO ORDERED.



MARY A. CHRZANOWSKI, Circuit Court Judge

Date: JUL 25 2006

CC: Salvatore D. Palombo  
Eric J. Smith

A TRUE COPY

Carmella Sabaugh

COUNTY CLERK

BY



SCOTT BEECH  
DEPUTY CLERK